

2 **Scope of unit (including residual units, add-ons, expanding and contracting units)**

When applying the three appropriate unit criteria, section 7112(a) of the Statute also requires that the Authority will determine the scope of the proposed unit, that is, whether:

...the appropriate unit should be established on an agency, plant, installation, functional or other basis.

The scope of a unit involves a variety of appropriateness of unit issues. For instance, scope of unit questions may arise following reorganizations or when a union seeks exclusive recognition for a group of the agency's unrepresented employees. Scope of unit questions may also arise in petitions involving add-on elections to existing units, residual units, units of employees specifically excluded from existing units and expanding and contracting units.

In general, the relevant information in a case involving the scope of a unit is identical to that at issue in any case involving unit appropriateness. See *RCL 1 - Appropriate Unit Determinations, Representation Outline I*.

- A. Size and Functional Grouping:** The Authority has found appropriate a wide variety of differently sized and configured bargaining units, based on case-by-case application of the statutory criteria, considering such factors as geographic and organizational location, commonality of working conditions and degree of operational and functional separation. The **size** of a proposed unit is only one factor considered in the context of all facts and circumstances relevant to appropriateness of unit.
- ▶ The Authority has found appropriate very small units, if the units otherwise meet the criteria set out in section 7112(a)(1). A unit of less than twenty employees was appropriate for exclusive recognition. *U.S. Department of the Air Force, Edwards Air Force Base, California (Edwards)*, 35 FLRA 1311 (1990).
 - ▶ The small size of a proposed unit does not automatically disqualify the unit from being found appropriate. However, to be appropriate, there must be more than one employee in the unit as "the principle of collective bargaining presupposes that there is more than one person on whose behalf bargaining takes place." *General Services Administration, Las Vegas Fleet Management Center, Sparks Field Office, Sparks, Nevada*

(GSA Sparks), 48 FLRA 1258 (1993). See also, *Report on a Ruling of the Assistant Secretary No. 44, 2 A/SLMR 637* (1972).

- ▶ Unit of employees of single field office found appropriate. *OCIJ, Chicago*, 48 FLRA 620 (1993).
- ▶ Unit of employees of district office found appropriate. *U.S. Department of the Interior, U.S. Geological Survey, Caribbean District*, 46 FLRA 832 (1992).
- ▶ Unit of employees of single plant found appropriate. *DPRO-Thiokol*, 41 FLRA 316 (1991).
- ▶ Unit of employees of one activity at multi-activity base was appropriate. *Department of the Air Force, 6th Missile Warning Squadron, Otis Air Force Base*, 3 FLRA 111 (1980).
- ▶ A regional level unit of air traffic control specialists was not appropriate, as employees shared community of interest with all other specialists nationwide. *Department of Transportation, Federal Aviation Administration, New England Region (FAA)*, 20 FLRA 224 (1985).
- ▶ Unit of employees in a single department of Activity was not appropriate given extensive interchange among employees in other line departments. *Naval Sea Support Center Atlantic Detachment*, 7 FLRA 626 (1982).

The Authority also applies the section 7112(a) criteria in determining the appropriateness of proposed units limited to employees in a particular **functional grouping**.

- ▶ Employees in a proposed unit of air traffic control specialists and technicians had unique qualifications, physical requirements, hours of work, work processes and retirement provisions and there was limited interchange between the employees in the proposed unit and other agency employees. The proposed unit was appropriately structured around a functional grouping of employees who possessed characteristics and concerns limited to that group. See *Edwards*, 35 FLRA 1311 (1990).
- ▶ Absent unusual circumstances warranting severance, a unit based on functional grouping will not be found appropriate if there is a history of representation in a larger unit. *Library of Congress*, 16 FLRA 429 (1985); *Department of the Air Force, Carswell Air Force Base, Texas*, 40 FLRA 221 (1991). See section 45 - Severance. Where there is no such

bargaining history, such units may be found to be appropriate, assuming that all three statutory criteria are met. See *Edwards; FAA*, 20 FLRA 224.

- ▶ A proposed unit of temporary cooks was not appropriate for exclusive recognition where there was evidence of extensive interchange between cooks and other employees; the cooks lacked a separate and distinct community of interest. *U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas*, 31 FLRA 938 (1988).
- B. Residual Units:** A residual unit is a unit of all eligible unrepresented employees of the type covered by the petition. See *Federal Trade Commission (FTC II)*, 35 FLRA 576 (1990). Residual unit claims are most frequently made in petitions seeking to add a previously unrepresented group of employees to an existing unit, however, adding these employees to an existing unit is not a requirement. In order for a unit to be considered “residual,” the petition must seek to represent all “eligible” unrepresented employees in the organization. If the evidence demonstrates a proposed unit is a residual unit, strict application of the appropriateness criteria is not required. See *FTC II* and *GSA Sparks*. However, if the evidence demonstrates that a proposed unit is not a residual unit, all appropriateness of unit criteria of section 7112(a) must be met. Handling complicated elections involving a group of residual employees when there is an intervenor raise novel issues. See *CHM 58.3.16*.
- C. Add-ons to Existing Units:** Where a union petitions for an election to add employees to an existing unit, the inclusion of such employees must result in an overall unit which meets the criteria for appropriateness of unit set forth in section 7112(a) of the Statute. In addition, if the proposed unit to be added is not a residual unit, it must independently constitute an appropriate unit. Thus, in any case involving an add-on to an existing unit, it may be crucial to determine whether the unit is a residual unit, in order to decide whether to apply the three appropriate unit criteria. See *GSA Sparks* (in which the Authority held that a unit was not a residual unit, was not appropriate standing alone and, therefore, was not an appropriate add-on to an existing unit).
- D. Expanding and Contracting Units:** Expanding and contracting unit issues arise when the unit appears to be either growing or shrinking during the time that the petition is processed. In cases involving successorship, issues may arise as to the appropriate time for determining whether employees of the predecessor constitute a majority of the successor’s unit. See *Naval Facilities Engineering Service Center, Port*

Hueneme, California (NFESC), 50 FLRA 363 (1995). Both contracting and expanding units may also raise the issue of “at what point” or “when” an election may be held. *Trident Refit Facility, Bangor, Bremerton, Washington*, 5 FLRA 606 (1981).

Expanding Units

- ▶ Parties may assert arguments concerning the adequacy of a showing of interest based on an expanding unit. When an agency's operations are expanding, a showing of interest is required only among those employed at the time that the petition is filed. *U.S. Department of Transportation, U.S. Coast Guard Finance Center, Chesapeake, Virginia (Coast Guard)*, 34 FLRA 946 (1990). The Hearing Officer limits any such assertion concerning the showing of interest to a statement of position.
- ▶ An election may be conducted in an expanding unit if the work force then on the rolls is “substantial and representative” of the skills and types of employees who will ultimately constitute the unit. *Coast Guard*, citing *Fall River Dyeing and Finishing Corp. v. NLRB (Fall River Dyeing)*, 482 U.S. 27, 48 (1987).
- ▶ Where there is evidence of a substantial and representative complement of employees, delaying an election until full staffing is achieved unduly frustrates the existing employees' ability to choose a representative, if any. *See Coast Guard*.

Contracting Bargaining Units

1. Contracting bargaining unit issues arise when there are immediate and fundamental changes in the employer's operations after a petition is filed and a party claims that it is not appropriate to conduct the election at a particular point in time because of the changes. The Authority has rejected such assertions when the claim of a contracting unit was speculative. *See Federal Deposit Insurance Corporation (FDIC)*, 34 FLRA 50 (1989). In *FDIC*, the Authority distinguished the circumstances present in *FDIC* from certain NLRB cases involving immediate and fundamental changes in the employer's operations.
- ▶ The agency anticipated eliminating an entire category of employees in the petitioned-for unit. This change was to occur gradually over a two-year period and the remaining category of employees in the petitioned-for unit simultaneously was to increase by roughly the same number. The Authority declined review of the Regional Director's decision to conduct

the election. *FDIC*.

- ▶ No election was held in circumstances where the employer had just reorganized and five of the six employees in the petitioned-for unit had become supervisors. *United Transports, Inc.*, 107 NLRB 1150 (1954).
- ▶ Where most of the work of the bargaining unit had been contracted out and the layoff of 75% of the employees was imminent, no election was held. *Douglas Motors Corp.*, 128 NLRB 307 (1960).

See HOG 38 for specific guidance about this topic at hearing.

Other References:

Department of the Air Force, Langley, Virginia, 40 FLRA 111 (1989).

Department of the Air Force, 90th Missile Wing (SAC), F.E. Warren Air Force Base, Cheyenne, Wyoming (F.E. Warren), 48 FLRA 650 (1990).

Department of the Interior, National Park Service, 55 FLRA 311 (1999) (functional unit of Agency-wide unrepresented Law Enforcement Park Rangers, Criminal Investigators, and Correctional Officers are not an appropriate separate unit).

Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio, 53 FLRA 1114 (1998).

Immigration and Naturalization Service, 12 FLRA 309 (1983).